



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: City Council Consideration of an Ordinance Prohibiting
Loitering by Minors During Certain Hours

MEETING DATE: October 6, 1993

PREPARED BY: City Attorney

RECOMMENDED ACTION: City Council consideration and possible introduction of
attached ordinance.

BACKGROUND: The attached curfew ordinance has been prepared at the
direction of the City Council. As drafted, it is intended
to narrowly address loitering by minors in designated
locations between the hours of 11:00 p.m. and 5:00 a.m., and
establishes criminal penalties for parents or guardians who
knowingly allow minors to violate the ordinance.

It should be stressed that the ordinance is drafted so narrowly because curfew
and loitering ordinances are frequently overturned due to language which is
overly broad and could be applied to otherwise constitutionally protected
activities. A number of city ordinances addressing curfews and loitering have
been invalidated on these grounds [e.g., Alves v. Justice Court 306 P.2d 601
(Chico's curfew ordinance); Ames v. City of Hermosa Beach 93 Cal.Rptr. 786].
These cases make it clear a curfew ordinance which simply prohibits the mere
presence of minors on public streets during certain hours without exception is
probably unconstitutional (In re C. 105 Cal.Rptr.113). Using these cases as
guidelines, the present draft was prepared.

As written, the "mere presence" of a minor in a public place after hours is not a
violation. The violation requires a specific intent to "loiter" as defined by
reference to other California law, and the ordinance contains guidelines and
examples of prohibited conduct, as well as exceptions and exemptions.
Admittedly, this ordinance is somewhat longer than other curfew ordinances found,
and an attempt was made to make it more explicit, thereby avoiding challenge.

For example, a minor just "hanging around" a park between 11:00 p.m. and 5:00
a.m., where drug dealing or gang activity is common, would be a violation.
However, just passing by that same park on the way directly home from a movie or
school dance would not. Congregating publicly with others displaying gang
related paraphernalia during the specified times would create a presumption of
violation, as would "cruising", that is, being observed by police to be in a car
passing by the same point more than twice between 11:00 p.m. and 5:00 a.m.
without legitimate business. The presumptions of violation can be overcome by
the minor showing a legitimate reason to be where he or she is found.

APPROVED _____

THOMAS A. PETERSON
City Manager



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Certain exemptions are also included to avoid constitutional problems. For example, if it can be shown that the minor is on a legitimate errand for parents, or dealing with an emergency, there would be no violation. Theaters and other places of supervised amusement are not defined as "public places" under the ordinance and school-sponsored events are excepted. On the other hand, minors found just idling in shopping center parking lots would be in violation if there were no legitimate reason for them to be there.

While this ordinance will not prohibit all juveniles from using the streets from 11:00 p.m. to 5:00 a.m., it should address the ones who cause the majority of enforcement problems. It should also give police a tool to better control street gangs and those juveniles with a propensity to cause trouble.

FUNDING: Does not apply.

Respectfully submitted,


Bob McNatt
City Attorney

BM/vc

ORDINANCE NO. 1588
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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
ADDING A NEW CHAPTER 9.10 TO THE LODI MUNICIPAL CODE RELATING TO THE
PROHIBITION OF LOITERING BY MINORS DURING CERTAIN HOURS

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Chapter 9.10, Loitering by Minors Prohibited During Certain Hours, is hereby added to the Lodi Municipal Code to read as follows:

Chapter 9.10

Loitering by Minors Prohibited During Certain Hours

9.10.010. Findings.

The City Council hereby finds and declares that the problems associated with minors loitering on City streets and in other public places between the hours of 11:00 p.m. and 5:00 a.m. is an increasing problem, creating a danger to both the public and to the minors by allowing such minors to be in contact with or have the opportunity for participation in street gangs, illegal drugs, and other unlawful activity while not under direct parental supervision. The City Council further finds and declares that the problems associated with such juvenile loitering impair the use and enjoyment of public and private property by law abiding citizens, create enforcement problems for police, and generally make the City a less desirable place to live. It is therefore necessary for the City Council to protect both the members of the public and the minors who are at risk by regulating certain conduct by minors while in designated public places. It is not the intention of the City Council to place restrictions upon minors while in such public places which involve legal and constitutionally protected activities.

2.10.020. Loitering by Minors Prohibited During Certain Hours.

It shall be unlawful for a minor, as defined herein, to loiter in any public place within the City between the hours of 11:00 p.m. and 5:00 a.m. of the following day, subject to the definitions and exceptions contained in this Chapter.

2.10.030. Responsibility of Parents or Guardians.

It shall be unlawful and a misdemeanor for any parent or guardian having the legal care or custody of a minor to knowingly allow or permit such minor to violate the provisions of this Chapter.

2.10.040. Definitions.

For purposes of this Chapter, the following definitions shall apply:

1. "Loiter" shall mean the lingering for the specific purpose of committing a crime or crimes as the opportunity may be discovered.
2. "Public place" shall mean any street, sidewalk, alley, park, outdoor recreation facility, or other similar publicly-owned property generally open to the public, and shall also include privately-owned property customarily open to the public, including but not limited to restaurants, malls, and parking lots, but shall not include theaters, arcades or similar places of supervised amusement.
3. "Emergency" shall mean an unforeseen situation involving the health, safety, or welfare of the minor, of the minor's employer, or a member of the minor's immediate family, and which requires the minor to be present in a public place between the hours of 11:00 p.m. and 5:00 a.m. of the following day.
4. "Minor" shall mean a person under the age of eighteen years.

9.10.050. Exemptions/Exceptions.

This Chapter shall not apply under the following circumstances to minors:

1. Emancipated pursuant to the provisions of California Civil Code Section 64 et seq. or similar statutes of another State.
2. Accompanied by a parent, guardian or other adult having legal care or custody of said minor.
3. Upon a specific, legitimate errand at the direction of a parent or guardian having the care or custody of a minor, while such minor is actually and directly carrying out such errand.
4. Going directly to or coming directly from a place of public amusement, school function, or place of employment, with the knowledge and consent of the minor's parent or guardian.
5. Present in a public place because of an emergency, as defined herein, while actually dealing with or responding to such emergency.

9.10.060. Circumstances Manifesting Intent to Loiter.

Circumstances or factors which may create a presumption of violation of this Chapter as it applies to determining intent to loiter, include but are not limited to the following:

1. The minor's presence in a public place known by police as a location in which illegal drug-related activity occurs or has occurred;
2. The minor's presence in a public place known by police as a location in which street gang members customarily congregate;
3. The minor's presence in a public place, without a legitimate reason, after such minor has been found in such public place, admonished or advised of this ordinance by a police officer and given the opportunity to leave such public place(s). The presumption created by this paragraph shall be valid only if the advisement or admonishment

occurs during the same 11:00 p.m. to 5:00 a.m. period specified above, as any alleged violation;

4. The minor's presence in a public place with or in a group wherein two or more persons are wearing or displaying street gang paraphernalia. For purposes of this Chapter, "gang paraphernalia" shall include distinctively-colored, styled or marked clothing, hats, bandannas, emblems, or symbols intended by the wearer to identify that person as a member of or associated with a known street gang;

5. The minor's presence in a vehicle which has been observed by police to drive past one specific location in the City more than twice during any single period of time between 11:00 p.m. and 5:00 a.m. of the following day. The presumption created by this paragraph shall be valid only if the observation by police occurs during the same 11:00 p.m. to 5:00 a.m. period specified above as any alleged violation.

2.10.070. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this Chapter should be declared invalid or unconstitutional, then the original ordinances shall be in full force and effect.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this day of

PHILLIP A. PENNINO
Mayor

Attest:

JENNIFER M. PERRIN
City Clerk

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State of California
County of San Joaquin, ss.

I, Jennifer M. Perrin, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1588 was introduced at a regular meeting of the City Council of the City of Lodi held October 6, 1993 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 1993 by the following vote:

Ayes:	Council Members -
Noes:	Council Members -
Absent:	Council Members -
Abstain:	Council Members -

I further certify that Ordinance No. 1588 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

JENNIFER M. PERRIN
City Clerk

Approved as to Form

BOBBY W. McNATT
City Attorney